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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ARTHUR J. GALLAGHER & CO., a  
 Delaware Corporation,

Plaintiff,

vs.

DON TARANTINO, an individual,  
 BERNADETTE HEATER, an individual,  
 MICHAEL MACHETTE, an individual, and  
 SPENCER BRUSH, an individual,

Defendants.

CASE NO.: 20-cv-05505-EMC

**GALLAGHER’S ADMINISTRATIVE  
 MOTION TO FILE UNDER SEAL  
 CERTAIN PORTIONS OF ITS  
 OPPOSITION TO DEFENDANTS’  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT AND MOTION TO  
 CONSIDER WHETHER OTHERS’  
 MATERIAL SHOULD BE SEALED**

Hearing: n/a (L.R. 7-11(c))  
 Judge: Judge Edward M. Chen

Pursuant to Civil Local Rules 7-11 and 79-5 and the Stipulated Protective Order (“SPO”) entered in this case (ECF No. 60), Plaintiff Arthur J. Gallagher & Co. (“Gallagher”) files this administrative motion to seal certain portions of Gallagher’s Opposition to Defendants’ Motion for Partial Summary Judgment (“Opposition”), which is being filled concurrently herewith, and also files this motion to consider whether Defendants’ materials should be sealed.

**I. GALLAGHER’S MOTION TO SEAL SHOULD BE GRANTED BECAUSE COMPELLING REASONS FOR SEALING EXIST.**

For dispositive motions, the Ninth Circuit applies the “compelling reasons” test to determine whether a party is entitled to file certain documents under seal for potentially dispositive motions. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016) (citation omitted); *see also Delfino Green & Green v. Workers Comp. Sols., LLC*, No. 15-cv-2302, 2015 WL 4235356, at \*1-2 (N.D. Cal. July 13, 2015) (citing *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir. 2006)).

A compelling reason to seal information exists where “court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569-70 (9th Cir. 2008) (internal quotation and citation omitted); *see also Ctr. for Auto Safety*, 809 F.3d at 1097 (“Examples [of a compelling reason to seal] include when a court record might be used . . . ‘as sources of business information that might harm a litigant’s competitive standing.’”) (*quoting Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978)). For purposes of sealing, the courts broadly construe a “trade secret” to include “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x at 569-70 (quoting Restatement (First) of Torts § 757 (1939), cmt. b)).

Similarly, a compelling reason to seal often exists when the information that is vital to a business’s success such as “internal review process[es]” and “sensitive information” are regularly sealed by the courts. *See Opperman v. Path, Inc.*, No. 13-cv-0453, 2017 WL 1036652, at \*3 (N.D.

Cal. Mar. 17, 2017) (finding compelling reasons to seal “confidential information about Twitter’s products, proposed features, design concepts, and internal review processes that constitute trade secrets”); *see also Adtrader, Inc. v. Google LLC*, 2020 WL 6395528, at \*2 (N.D. Cal. Feb. 11, 2020) (sealing documents regarding “internal policies, priorities, and strategic communications” that “could cause competitive harm by providing insight into Google’s strategic and financial decisions, and by revealing to competitors the capabilities of Google’s systems”).

Gallagher respectfully requests this Court to seal various documents and portions of documents containing Gallagher’s confidential, proprietary, non-public information that has been designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” by Gallagher pursuant to the SPO, as set forth in the Declaration of Riley Binford in Support of: (1) Gallagher’s Opposition to Defendants’ Motion for Partial Summary Judgment; and (2) Gallagher’s Administrative Motion to File Under Seal Certain Portions of that Opposition (“Binford Decl.”) and the Proposed Order filed herewith.

As detailed in the Binford Declaration the information Gallagher seeks to seal is either: (1) highly sensitive and confidential information that Gallagher protects as a trade secret; or (2) Gallagher’s internal strategic business policies and financial decision-making documents, including sensitive financial information and the confidential information of non-party clients and Gallagher employees. (Binford Decl. ¶¶ 2-5.) Gallagher’s sensitive, confidential, and trade secret information is precisely the type of proprietary information typically sealed by courts. *See Prescott v. Reckitt Benckiser LLC*, 2022 WL 847309, at \*4 (N.D. Cal. Mar. 22, 2022) (“internal business strategies, competitive analyses, trade secrets, product development plans, and financial information” are “an appropriate subject for sealing”); *see also Oracle USA, Inc. v. SAP AG*, No. 07-cv-1658, 2009 U.S. Dist. LEXIS 71365, at \*4-5 (N.D. Cal. Aug. 13, 2009) (granting motion to seal where moving party “considered and treated the information contained in the subject documents as confidential, commercially sensitive and proprietary” and where “public disclosure of such information would create a risk of significant competitive injury and particularized harm and prejudice . . .”) (citation omitted). A compelling reason to seal this information exists because Gallagher would suffer

1 serious competitive harm if this information were publicly disclosed because it is the type of  
 2 information that allows its competitors to efficiently poach clients from Gallagher. (Binford Decl.  
 3 ¶¶ 3, 5.) The fact that Defendants took this information and used it to poach clients from Gallagher  
 4 is at the very heart of this dispute, and allowing further dissemination of this material could only  
 5 further embolden competitors to continue poaching Gallagher's remaining clients.

6 Gallagher's internal communications, decision-making, and finances, including sensitive  
 7 internal accounting practices and the confidential information of non-party clients and Gallagher's  
 8 employees, evidence highly confidential business information and are likewise proper for sealing.  
 9 *Rodman v. Safeway Inc.*, No. 11-cv-3003, 2014 WL 12787874, at \*2 (N.D. Cal. Aug. 22, 2014)  
 10 (sealing "internal, nonpublic information discussing [the defendant's] pricing strategy, business  
 11 decisionmaking [sic], and financial records, which would expose [the defendant] to competitive  
 12 harm if disclosed"). A compelling reasons exist to seal Gallagher's confidential customer and  
 13 employee information because Gallagher's ability to maintain the confidentiality of its clients' and  
 14 employee's private information is vital to its commercial success. *See Opperman*, 2017 WL  
 15 1036652, at \*4 ("the privacy interests of non-parties provide[s a] compelling reason[n] to seal").  
 16 This includes Gallagher's clients' financial information and information related to their business  
 17 operations and assets, because public disclosure would allow competitors access to this sensitive,  
 18 non-public information and would undermine the trust clients have in Gallagher and its products.  
 19 (Binford Decl. ¶ 5.)

20 The sealing Gallagher proposes is narrowly tailored because Gallagher only seeks to redact  
 21 the information that would harm Gallagher or non-parties by public disclosure, and similarly only  
 22 proposes fully sealing exhibits where all or substantially all of the exhibit comprises the type of  
 23 sealable information described in this Motion and in the Binford Declaration. (*See Proposed Order*,  
 24 filled concurrently.) The Opposition itself contains minimal redactions of information that  
 25 Defendants or other third parties have designated as confidential or highly confidential.

26 Based on the above and the reasons set forth in the Binford Declaration, Gallagher attaches  
 27 its full and unredacted Opposition and exhibits to this Motion, with narrowly redacted/sealed  
 28

versions filed publicly as required by Local Rules 79-5(d) & (e). Gallagher respectfully requests that the information set forth in the Proposed Order remain sealed for the reasons discussed herein and in the Binford Declaration.

## **II. GALLAGHER’S MOTION TO CONSIDER WHETHER ANOTHER PARTY’S MATERIAL BE SEALED**

Pursuant to Local Rule 79-5(f), Gallagher hereby moves for consideration of whether Defendants’ and non-parties’ materials should be filed under seal.

Gallagher filed the following exhibits to its Opposition under seal because they were designated by the Defendants, non-party Alliant Insurance Services, Inc. (“Alliant”), or other non-parties as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” (“AEO”) when they were produced to Gallagher in this case pursuant to subpoenas:

<b>Exhibit</b>	<b>Designating Party</b>	<b>Designation Level</b>
Exhibit 9	Alliant	AEO
Exhibit 26	Machette	Confidential
Exhibit 27	Tarantino	Confidential
Exhibit 36	Alliant	Confidential
Exhibit 39	Alliant	Confidential
Exhibit 42	Alliant	Confidential
Exhibit 47	Alliant	Confidential
Exhibit 48	Alliant	Confidential
Exhibit 49	Basic American Foods	AEO
Exhibit 78	Kaye Bassman	AEO
Exhibit 79	Kaye Bassman	AEO
Exhibit 83	Tarantino	AEO
Exhibit 84	Tarantino	Confidential
Opposition 7:17-19	Alliant & Tarantino	Confidential

Opposition 8:4-5	Tarantino	Confidential
Opposition 14:14-18	Alliant	AEO/Confidential
Opposition 14 fn. 73	Alliant	AEO/Confidential
Opposition 14 fn. 74	Alliant	Confidential

Gallagher understands that the above parties, under Local Rule 79-5(f)(3), within seven days of the filing of this motion, must file a statement under Local Rule 97-5(c) justifying their designations of the above-referenced exhibits.

Dated: April 7, 2022

By: /s/ Meghan R. McMeel

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